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LOKAI HOLDINGS, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOKAI HOLDINGS, LCC, a Delaware
Corporation,

CASE NO:

Plaintiff,

COMPLAINT

v.

DEMAND FOR JURY TRIAL

ABSOLUTE MARKETING, CRAIG
HUEFFNER and DOES 1-10,

Defendants.

Plaintiff LOKAI HOLDINGS, LLC (“Plaintiff”) by their attorneys, Scarinci & Hollenbeck, LLC and Fennemore Craig, P.C., as and for its Complaint against defendant ABSOLUTE MARKETING, (“Absolute Marketing”), defendant CRAIG HUEFFNER (“Hueffner”) and defendants DOES 1-10 (“Does”) (Absolute Marketing, Hueffner and Does collectively referred to herein as “Defendants”) allege as follows:

1. This is an action for trademark infringement, counterfeiting, false designation of origin and unfair competition under 15 U.S.C. §§ 1051 et seq., design patent infringement under

1 the 35 U.S.C. §§ 1 et seq., and copyright infringement under 17 U.S.C. §§ 101 et seq.

2 **THE PARTIES**

3 2. Plaintiff is a Delaware corporation with its principal address at 36 E. 31st Street,
4 Suite 602, New York, New York, 10016, and is engaged in business as a manufacturer and seller
5 of beaded bracelets, which sell world-wide, including within the State of Nevada.

6 3. Upon information and belief, Absolute Marketing is a fictitious entity registered
7 with the Florida Secretary of State, with a mailing address of 4942 Indian Hills Drive, Racine, WI
8 53406.

9 4. Upon information and belief, Hueffner is a Wisconsin individual, with a mailing
10 address of 4942 Indian Hills Drive, Racine, WI 53406.

11 5. Upon information and belief, Hueffner is the owner of Absolute Marketing.

12 6. The true names and capacities of Does are unknown to Plaintiff, who therefore sues
13 said Defendants by such fictitious names. Plaintiff is informed and thereon believes and alleges
14 that each of the Does is, in some manner, responsible for the events and happenings herein referred
15 to, either contractually or tortiously, and each has caused damage to the Plaintiff as herein alleged.
16 When Plaintiff ascertains the true names and capacities of the Does, it will ask leave of this Court
17 to amend its Complaint by setting forth the same.

18 **JURISDICTION AND VENUE**

19 7. This Court has jurisdiction over the subject matter of this action pursuant to 28
20 U.S.C. §§ 1331 (federal question jurisdiction) and 1338 (a) and (b) (claims arising under
21 copyright, trademark and patent laws; claims of unfair competition premised on copyright,
22 trademark and patent violations).

23 8. On information and belief, this Court has personal jurisdiction over Defendants, as
24 a substantial part of the events or omissions giving rise to the claim occurred in the state of Nevada
25 and Plaintiff expects service of process to be effectuated upon Defendants in the State of Nevada..

26 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial
27 part of the events or omissions giving rise to the claim occurred in this judicial district.
28

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FACTUAL BACKGROUND

10. Plaintiff manufactures and sells beaded bracelets (the “Lokai Bracelet”) in various colors, under, or which bear, on the bracelet and/or attached tag, the following federally registered trademarks: (1) the standard character “lokai” trademark (Reg. Nos. 4,429,129 and 4,637,357), (2) the stylized “lokai” trademark (Reg. Nos. 4,640,686 and 4,742,254), (3) the stylized water droplet logo (Reg. Nos. 4,636,915 and 4,698,780) and (4) the standard character “find your balance” trademark (Reg. No. 4,870,494) (collectively the “Trademarks”).

11. The Lokai Bracelet embodies the design protected by US Design Patent No. D748,000 S (the “Design Patent”).

12. The tag attached to the clear-colored Lokai Bracelet (the “Lokai Bracelet Hangtag”) is registered with the US Copyright Office under VA 1-968-047, with an effective date of registration of November 03, 2014 (the “Copyright”).

13. Plaintiff has invested significant amounts of money, time and effort in promoting and advertising the Lokai Bracelet, Trademarks, Design Patent and Copyright.

14. Plaintiff maintains a website, accessed via the domain name MYLOKAI.COM (the “Lokai Website”), which was created on July 12, 2011.

15. Plaintiff owns the copyright in and to the Lokai Website, as well as the contents, text, images and other materials on the Lokai Website (the “Lokai Website Materials”), and has provided notice thereof by the copyright notice affixed to each webpage.

16. Upon information and belief, Defendants have exhibited at trade shows throughout the continental United States, including, *inter alia*, in the states of Nevada, California, Massachusetts, Washington and Florida, in which they use the Trademarks, Design Patent, Copyright and Lokai Website Materials, or unauthorized copies thereof, to hold themselves out to the public to be sponsored by, authorized by or otherwise affiliated with Plaintiffs.

17. Upon information and belief, in conjunction with Defendant’s trade show exhibitions, Defendants have marketed, offered for sale and sold counterfeit versions of the Lokai Bracelet (the “Counterfeit Goods”), which improperly embody, bear or otherwise use the Trademarks, Design Patent and Copyright, or unauthorized copies thereof.

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1 18. On or about August 11, 2015, representatives of Plaintiff sent a cease and desist
2 letter, via email and first class mail, to a physical address and email address believed to be used by
3 Defendants (the "August 11 Letter").

4 19. On or about August 11, 2015, representatives of Plaintiff received email delivery
5 confirmation that the August 11 letter was delivered to the email address believed to be used by
6 Defendants.

7 20. On or about August 11, 2015, representatives of Plaintiff were contacted by
8 Hueffner's estranged or former spouse, Ellen Hueffner, and was informed that Hueffner does not
9 live at the physical address where the August 11 Letter was sent.

10 21. On or about August 18, 2015, representatives of Plaintiff sent a cease and desist
11 letter, via email and first class mail, to the email address believed to be used by Defendants and to
12 the physical address of Absolute Marketing as identified in the application for registration of
13 fictitious name filed with the Florida Secretary of State (the "August 18 Letter").

14 22. On or about August 18, 2015, representatives of Plaintiff received email delivery
15 confirmation that the August 18 letter was delivered to the email address believed to be used by
16 Defendants.

17 23. On or about April 4, 2016, representatives of Plaintiff contacted Hueffner by
18 telephone.

19 24. During the telephone call on or about April 4, 2016, representatives of Plaintiff
20 notified Hueffner of Defendant's infringing activities and sale of Counterfeit Goods and demanded
21 that Defendants cease and desist same.

22 25. On or about April 4 and 5 of 2016, representatives of Plaintiff exchanged email
23 correspondence with Hueffner in an attempt to resolve this matter, however Hueffner refused to
24 comply and instructed representatives of Plaintiff to not contact him again.

25 26. As of the date hereof, and since the date of the August 11 Letter, Defendants
26 continue to exhibit at trade shows throughout the continental United States, including the state of
27 Nevada, in which they use the Trademarks, Design Patent, Copyright and Lokai Website
28 Materials, or unauthorized copies thereof, to hold themselves out to the public to be sponsored by,

1 authorized by or otherwise affiliated with Plaintiff, and sell Counterfeit Goods in furtherance
2 thereof.

3 **FIRST CAUSE OF ACTION**

4 **TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(1)**

5 27. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
6 through 26 of this Complaint with the same force and effect as if set forth fully at length herein.

7 28. Plaintiff is the owner of registrations with the United States Patent and Trademark
8 Office (the "USPTO") for the Trademarks.

9 29. Defendants are using the Trademarks, without authorization from Plaintiff, in
10 connection with the sale of the Counterfeit Goods and in the exhibition of trade show booths
11 throughout the continental United States.

12 30. Defendants' actions are likely to cause, and have caused, confusion, mistake and
13 deception among the general consuming public as to the origin and quality of the Counterfeit
14 Goods based on the nearly identical nature of the Counterfeit Goods compared to the Lokai
15 Bracelet.

16 31. Defendants' actions are likely to cause, and have caused, confusion, mistake and
17 deception among the general consuming public as to the affiliation of Defendants with Plaintiff
18 based on Defendant's use of the Trademarks.

19 32. Defendants' actions constitute infringement of the Trademarks, in violation of
20 Plaintiff's rights under 15 U.S.C. § 1114(1).

21 33. Defendants were notified of Plaintiff's rights in and to the Trademarks on or about
22 August 11, 2015, August 18, 2015 and April 4, 2016.

23 34. Defendants have been and are infringing on the Trademarks with full knowledge
24 and willful disregard for Plaintiff's exclusive rights, and with knowledge that the Trademarks are
25 exclusively associated with Plaintiff.

26 35. Defendants' conduct is intentional, willful, wanton and malicious, and is
27 undertaken with the intent to reap the benefit of Plaintiff's trade identity and goodwill.

28 36. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and

1 damages as a result of the acts of Defendants as aforesaid in an amount thus far not determined.

2 **SECOND CAUSE OF ACTION**

3 **TRADEMARK COUNTERFEITING UNDER 15 U.S.C. § 1114(1)**

4 37. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
5 through 36 of this Complaint with the same force and effect as if set forth fully at length herein.

6 38. Plaintiff is the owner of registrations with the USPTO for the Trademarks.

7 39. The registrations with the USPTO for the standard character “lo kai” trademark
8 (Reg. No. 4,429,129), the stylized “lo kai” trademark (Reg. No. 4,640,686) and the stylized water
9 droplet logo (Reg. No. 4,636,915), list “bracelets; jewelry; rubber or silicon wristbands in the
10 nature of a bracelet” in the description of goods for such registrations, in international class 014.

11 40. Defendants are marketing, offering for sale and/or selling the Counterfeit Goods,
12 which are a type of bracelet, jewelry or rubber or silicon wristband in the nature of a bracelet.

13 41. The Counterfeit Goods being offered for sale by Defendant are identical with, or
14 substantially indistinguishable from the Lokai Bracelet, and bear a mark identical with, or
15 substantially indistinguishable from, the registered stylized water droplet mark (Reg. No.
16 4,636,915).

17 42. The tag attached to the Counterfeit Goods being offered for sale by Defendant bears
18 a mark identical with, substantially indistinguishable from, the stylized “lo kai” trademark (Reg.
19 No. 4,640,686) and the stylized water droplet logo (Reg. No. 4,636,915).

20 43. Defendants’ actions are likely to cause, and have caused, confusion, mistake and
21 deception among the general consuming public as to the origin, quality and authenticity of the
22 Counterfeit Goods.

23 44. Defendants’ actions constitute trademark counterfeiting in violation of Plaintiff’s
24 rights under 15 U.S.C. § 1114(1).

25 45. Defendants were notified of Plaintiff’s rights in and to the Trademarks on or about
26 August 11, 2015, August 18, 2015 and April 4, 2016.

27 46. Defendants have been and are infringing on the Trademarks with full knowledge
28 and willful disregard for Plaintiff’s exclusive rights, with knowledge that the Trademarks are

1 exclusively associated with Plaintiff.

2 47. Defendants' conduct is intentional, willful, wanton and malicious, and is
3 undertaken with the intent to reap the benefit of Plaintiff's trade identity and goodwill.

4 48. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and
5 damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined.

6 **THIRD CAUSE OF ACTION**

7 **FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION OF FACT AND FALSE**
8 **REPRESENTATION OF FACT UNDER 15 U.S.C. § 1125(a)**

9 49. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
10 through 48 of this Complaint with the same force and effect as if set forth fully at length herein.

11 50. Plaintiff is the owner of registrations with the USPTO for the Trademarks.

12 51. Defendants have affixed, applied, or used in connection with the sale of the
13 Counterfeit Goods, the Trademarks and false descriptions and representations, which tend to
14 falsely describe or represent that the Counterfeit Goods and/or Defendants are sponsored by,
15 authorized by, operated by or otherwise affiliated with Plaintiff.

16 52. Defendants' actions are likely to cause, and have caused, confusion, mistake and
17 deception among the general consuming public as to the origin, quality and authenticity of the
18 Counterfeit Website and Counterfeit Goods.

19 53. Defendants' actions constitute false designation of origin, false description of fact
20 and false representation of fact in violation of 15 U.S.C. § 1125(a).

21 54. Defendants were notified of Plaintiff's rights in and to the Trademarks on or about
22 August 11, 2015, August 18, 2015 and April 4, 2016.

23 55. Defendants' conduct is intentional, willful, wanton and malicious, and is
24 undertaken with the intent to reap the benefit of Plaintiff's trade identity and goodwill.

25 56. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and
26 damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined.

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FOURTH CAUSE OF ACTION

UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a)

57. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 56 of this Complaint with the same force and effect as if set forth fully at length herein.

58. Plaintiff is the owner of registrations with the USPTO for the Trademarks.

59. Defendants are unfairly using the Trademarks to promote, market or sell the Counterfeit Goods.

60. Defendants' actions are likely to cause, and have caused, confusion, mistake and deception among the general consuming public as to the origin and quality of the Counterfeit Website and Counterfeit Goods.

61. Defendants' actions constitute unfair competition under 15 U.S.C. § 1125(a).

62. Defendants were notified of Plaintiff's rights in and to the Trademarks on or about August 11, 2015, August 18, 2015 and April 4, 2016.

63. Defendants' conduct is intentional, willful, wanton and malicious, and is undertaken with the intent to reap the benefit of Plaintiff's trade identity and goodwill.

64. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and damage as a result of the acts of Defendant as aforesaid in an amount thus far not determined.

FIFTH CAUSE OF ACTION

DESIGN PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(a)

65. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 64 of this Complaint with the same force and effect as if set forth fully at length herein.

66. Plaintiff is the owner of the Design Patent registered with the USPTO.

67. The Counterfeit Goods use or otherwise embody the design embodied in the Design Patent.

68. Defendants, without authority, offered to sell and/or sold the Counterfeit Goods within the United States.

69. Defendants' actions constitute patent infringement under 35 U.S.C. § 271(a).

70. This is an exceptional case as Defendants' actions have been taken with full

1 knowledge and willful disregard for Plaintiff's exclusive rights to make use of the design
2 embodied in the Design Patent.

3 71. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and
4 damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined.

5 **SIXTH CAUSE OF ACTION**

6 **COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. §§ 106 and 501**

7 72. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
8 through 71 of this Complaint with the same force and effect as if set forth fully at length herein.

9 73. Plaintiff is the owner of registrations with the Copyright Office for the Copyright.

10 74. Defendants are using copies of the Copyright, or original elements thereof, without
11 authorization from Plaintiff, in connection with the sale of the Counterfeit Goods.

12 75. Defendants' acts constitute copyright infringement under 17 U.S.C. §§ 106 and
13 501.

14 76. Defendants' actions have been taken with full knowledge and willful disregard for
15 Plaintiff's exclusive rights in and to the Copyright.

16 77. Plaintiff has no adequate remedy at law, and is suffering irreparable harm and
17 damage as a result of the acts of Defendants as aforesaid in an amount thus far not determined.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, LOKAI HOLDINGS, LLC, seeks judgment against Defendants,
20 ABSOLUTE MARKETING, CRAIG HUEFFNER and DOES 1-10, as follows:

21 I. That the Defendants be permanently enjoined and restrained from:

- 22 a) Using in any manner the Trademarks;
- 23 b) Using in any manner the Design Patent;
- 24 c) Using in any manner the Copyright;
- 25 d) Using in any manner the Lokai Website Material;
- 26 e) Manufacturing, marketing, advertising, distributing or selling products
- 27 bearing the Trademarks, Design Patent or Copyright, including, without limitation,
- 28 the Counterfeit Goods;

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1 f) Holding themselves to the public to be sponsored by, authorized by or
2 otherwise affiliated with Plaintiff; and

3 g) Otherwise competing unfairly with Plaintiff in any manner.

4 II. That Defendants be ordered to deliver to Plaintiff for destruction, any and all goods
5 in Defendants' possession, or under its control, which infringe upon the Trademarks, Design
6 Patent or Copyright, including without limitation, the Counterfeit Goods.

7 III. That Defendants be ordered to provide an accounting to Plaintiff.

8 IV. That Defendants be ordered to pay to Plaintiff damages for Defendants' trademark
9 infringement pursuant to 15 U.S.C. § 1117 in the form of either, at Plaintiff's election before the
10 entry of a final judgment: (a) Defendants' profits, Plaintiff's damages, and costs trebled under 15
11 U.S.C. § 1117(b), including three (3) times such profits or damages, whichever is greater, together
12 with a reasonable attorney's fee; or (b) statutory damages pursuant to 15 U.S.C. § 1117(c) up to
13 Two Million Dollars (\$2,000,000.00) per counterfeit mark per type of good sold, offered for sale,
14 or distributed; and in addition, pre-and post-judgment interest.

15 V. That Plaintiff be ordered to pay to Plaintiff damages caused to Plaintiff by reason of
16 Defendants infringement of the Design Patent, including treble damages for willful infringement
17 of the Design Patent, pursuant to 35 U.S.C. § 284.

18 VI. That Defendant be ordered to pay to Plaintiff Defendant's total profits for
19 infringement of the Design Patent, pursuant to 35 U.S.C. § 289.

20 VII. That Defendants be ordered to pay to Plaintiff damages for Defendants' trademark
21 infringement pursuant to 17 U.S.C. § 504 in the form of either, at Plaintiff's election before the
22 entry of a final judgment: (a) Defendants' profits and Plaintiff's actual damages pursuant to 17
23 U.S.C. § 504(b), or (b) statutory damages pursuant to 17 U.S.C. § 504(c)

24 VIII. That Defendants be ordered to provide Plaintiff with a complete list of: (a)
25 individuals and entities who manufactured the Counterfeit Goods (along with the quantities of all
26 such infringing and counterfeit merchandise); (b) individuals and entities that sold or provided the
27 Counterfeit Goods to Defendants (along with the quantities of all such infringing and counterfeit
28 merchandise); and (c) individuals and entities to whom or which Defendants sold, offered for sale,

distributed, advertised or promoted the Counterfeit Goods (along with the quantities of all such counterfeit merchandise).

IX. That Plaintiff be awarded punitive damages for Defendants' willful and malicious acts of common law trademark infringement, false representation, and unfair competition.

X. That Plaintiff be awarded reasonable attorneys' fees and costs, pursuant to 15 U.S.C. § 1117.

XI. That this case be declared exceptional under 35 U.S.C. § 285 and that Plaintiff be awarded its attorneys' fees, expenses, and costs incurred in this action.

XII. That Plaintiff be awarded reasonable attorneys' fees and costs, pursuant to 17 U.S.C. § 505.

XIII. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues triable by jury.

DATED: May 26, 2016

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